XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CA 1293/96

CF0000061018

Division Bench (Crimi...)

APPEAL OF PRISONER

No. 38661522 Name [illegible]

Father's name [illegible]

Residence [illegible] Age [illegible]

Sentenced to [illegible] On 25/4/96

Under section [illegible] by [illegible]

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 23/5/96

3 Date on which Appeal sent 13/6/96

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 38661522 Name [illegible]

Confined in [illegible] Jail [illegible]

No. 524 (Last) Dated 13/6/1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ [illegible] togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

[illegible]

Superintendent 13/8/96
[illegible] Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

High Court of Madhya Pradesh
JABALPUR
24 JUN 1996
Reg. No. 337
Recept Clerk
High Court, Jabalpur

No ..... Dated 199

Forwarded to the 25-11-96 & 13-6-96

April 5

May 31

Date of receipt in Appellate Court .....

June 13

49 within time

(P. T. O.)

(13)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. App. No. 1293/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

9-3-2006

Mr. Ravindra Agrawal, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

PER L.C. BHADOO, J.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality and correctness of the judgment of conviction and order of sentence dated 25-4-96 passed by the 2nd Additional Sessions Judge, Bilaspur in S.T. No.293/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution is that PW-1 Kujal Singh lodged the FIR (Ex.-P/17) in the Outpost Belgahna, P.S. Kota to the effect that yesterday on 6-4-95 some dance was going on in the house of Dhanuhar. At about 11 p.m. dance was over. Thereafter, accused Man Singh @ Lathi Dhanuhar came to the house of deceased Naththu @ Phool Singh and said that you have given less share in the kitchen garden and started quarrelling. He was furious and went to his house. At about 12 p.m. he went to the house of Naththu @ Phool Singh having bow and arrow in his hand, who was just to

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take his meal. The accused shot the arrow on Naththu @ Phool Singh which hit on the chest of Naththu @ Phool Singh, as a result of which he died on the spot. Mother of Naththu @ Phool Singh Sonkunwar saw the incident. After the incident, the accused ran away. Sonkunwar started raising cries, hearing her cries, Bechuram and others reached.

Receiving this report, the Station House Officer registered the crime, took up the investigation and went to the place of occurrence. The site plan (Ex.-P/20) of the place of occurrence was prepared by Patwari. The Investigating Officer reached to the scene of occurrence and prepared Panchanama (Ex.-P/3) of the dead body of Naththu @ Phool Singh. While in the police custody, the accused gave a memorandum regarding the place where he had kept bow and in pursuance of that he got recovered the bow under Ex.-P/2. The dead body of the deceased was sent for the postmortem examination under Ex.-P/4 to the Mini Primary Health Centre, Tenganmada where Dr. Subhash Ghosalkar (PW-6) conducted the postmortem and prepared the postmortem report Ex.-P/5. The blood stained arrow and clothes were sent for examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/11 was received.

After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Bilaspur received the case on transfer for trial.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (-3-)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution examined 13 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence. Learned Additional Sessions Judge after hearing the argument of respective counsel, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Naththu @ Phool Singh is not in dispute.

As far as involvement of the accused/appellant in assaulting the deceased with arrow is concerned, PW-1 Kujal Singh has stated that in the fateful night he was at his residence. He saw that the accused came with bow and arrow. He shot the arrow on Naththu @ Phool Singh which hit on the right side of the chest and Naththu @ Phool Singh fell down, at that time, brother of Naththu @ Phool Singh, Itwari was also there. The accused ran away. In para-4 of his evidence, he has stated that the accused was raising the wall which was objected by deceased Naththu @ Phool Singh, therefore, the accused shot arrow on Naththu @ Phool Singh. In the cross-examination, he has stated that on that day both the accused and the deceased consumed liquor and there was dispute among them. On hearing the shout, he came out of the house. There was a lamp in his house and in Naththu @ Phool Singh's house also. He saw the accused, while arrow was being shot by him. PW-2 Sonkunwar is the mother of the deceased, she was inside the house. She has stated that arrow hit on the chest of

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Naththu @ Phool Singh. In para-4 of her cross-examination, she has stated that accused Man Singh shot arrow through the hole in the door. PW-3 Bechuram has stated that on hearing the cries, he came out of the house and saw that arrow was stuck in the chest of deceased Naththu @ Phool Singh which was informed by Sonkunwar to him. There was dispute between the accused and the deceased and earlier also they used to quarrel. On the fateful day the accused came and said that he will not leave Naththu @ Phool Singh and murder him. PW-4 Tiharu has also stated that in the night the accused shot arrow on Naththu @ Phool Singh. Moreover, from the evidence of PW-5 Tihari Singh, Up Sarpanch and Investigating Officer R.P. Sharma (PW-10), it is established that bow was recovered at the instance of the accused. Therefore, in view of the above evidence, it is established that the accused was author of the crime in question.

Learned counsel for the accused/appellant argued that the prosecution has not been able to establish that the accused shot arrow with intention to cause death of deceased Naththu @ Phool Singh. He also argued that as per the evidence of PW-1 Kujal Singh, both the accused and the deceased consumed liquor and there was some quarrel between them. The accused went to his house, thereafter brought bow & arrow and shot the arrow. Moreover, he shot arrow through the hole of the door, therefore, it was not possible for the accused to aim at the vital part of the deceased. When the arrow was shot, there was night time.

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On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

From the evidence, it has not come on record that the accused shot arrow in the spur of moment or in a heat of passion or in a sudden fight. In order to attract the provisions of Exception 4 of Section 300 of the IPC it should be established that the accused committed the crime without pre-meditation, in a sudden fight, in a heat of passion and in a sudden quarrel. There should not be time gap between the quarrel and assault. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of exception 4 of Section 300 IPC. Applying the above principle, if we look into the present case, there is nothing on record to show that on the spur of moment or in a sudden fight the accused assaulted. In-fact, the accused went to his house and brought bow and arrow, and thereafter he shot the arrow on Naththu @ Phool Singh, therefore, there was time gap. Even if it is presumed that there was any quarrel between the accused and the deceased at the place of dance or when the deceased stopped the accused in raising the wall.

As far as question that the accused shot arrow through the hole of the door is concerned, the defence has not been able to show that the distance between where the accused was sitting and the place from where the accused shot arrow was so much that it was not possible for the

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accused to aim the vital part of the deceased correctly. Further, it has also not come on record that the hole through which the accused shot the arrow was so small hole that it was not possible for the accused to aim at the vital part of the deceased through hole. Therefore, we are not convinced with the arguments advanced by learned counsel for the accused/appellant. The manner in which the accused shot the arrow on the chest of the deceased, as a result of which lung of the deceased was ruptured and he died instantaneously. Therefore, intention of the accused was clear to commit the murder of Naththu.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Sd/-
L.C. BHADOO
Judge

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8/12.06